IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P.No.30774 of 2003
and
W.P.M.P.No.37511 of 2003

Kathunbi ... Petitioner

Vs

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Adi-Dravidar and Tribal
Welfare Department,
Fort St. George, Madras – 9.

2.The Special Tahsildar,
Adi-Dravidar Welfare
Kallakurichi,
Villupuram District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration declaring that the acquisition proceedings under the Land Acquisition Act 1894 (Central Act 1/1894) in respect of the petitioner's lands measuring 3.50 acres comprised in Survey No.109/2B of Mungilanthangal Village, Sankarapuram Taluk, Villupuram District in pursuant to 4(1) Notification Gazetted on 21.11.91 and Sec.6 Declaration issued in G.O.(3D) 86, Adi-Dravidar and Tribal Welfare Department dated 29.1.1993 and published in Gazette dated 30.1.1993 is null and void.

For Petitioner : Mr.S.Elamurugan

For Respondents : Mr.K.Ravikumar
Additional Government Pleader

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O R D E R

The prayer sought for herein is a writ of declaration to declare that the acquisition proceedings under the Land Acquisition Act 1894 (Central Act 1/1894) in respect of the petitioner's lands, measuring 3.50 acres, comprised in Survey No.109/2B of Mungilanthangal Village, Sankarapuram Taluk, Villupuram District in pursuant to 4(1) Notification gazetted on 21.11.91 and Section 6 Declaration issued in G.O.(3D) 86, Adi-Dravidar and Tribal Welfare Department, dated 29.1.1993 and published in Gazette dated 30.1.1993, as null and void.

2.The necessary facts which are required to be noticed for disposal of the writ petition are as follows.

3.The landed property to an extent of 3.50 acres at Survey No.109/2B of Mungilanthangal Village, Villupuram District originally belonged to the husband of the petitioner, one Nabisha, and his brother one Musthafa, by way of joint patta. The said land was sought to be acquired for the public purpose, namely, to provide housing site to Adi-Dravidar people and accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894, was issued on in G.O.3D.No.1070, Adi-Dravidar and Tribal Welfare Department dated 21.11.1991, and it was gazetted on 11.12.1991. Subsequently, declaration under Section 6 was also made on 29.01.1993 in G.O.3D.No.86, Adi Dravidar and Tribal Welfare Department. 5-A enquiry was conducted. In the meanwhile, on 28.03.1998, the petitioner's husband died. It is the case of the

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petitioner that, after the demise of her husband, she is in continuous possession of the property, belongs to her husband and there had been no notice, whatsoever, either to the petitioner's husband or to the petitioner and there had been no award order passed, and only in that circumstances, since, the respondents were trying to enter into the property, which was in possession of the petitioner, she has approached this Court with the present writ petition with the aforesaid prayer, challenging such land acquisition proceedings.

4.Mr.S.Elamurugan, learned counsel appearing for the petitioner, would submit that, even if 4(1) notification had been gazetted on 11.12.1991, there was no publication in the local newspapers. He also submitted that, even after award enquiry, no award has been passed within two years period from the Gazette publication of Section 6 declaration on 30.01.1993 and since, there was no award passed on or before 30.01.1995, the entire land acquisition proceedings can be vitiated. That apart, the learned counsel would further submit that, the acquisition proceedings was initiated for the purpose of providing house sites to the Adi-Dravidar people and since, they have already identified an alternative land and house sites had also been given to them, the petitioner's land is no more required.

5.The learned counsel would also submit that, throughout, the possession had been with the petitioner's husband and subsequently, after his

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demise, with the petitioner, and it has never been taken by the respondents, therefore, for all these reasons and facts, the entire land acquisition proceedings have to be declared unlawful.

6.On the other hand, Mr.K.Ravikumar, learned Additional Government Pleader, appearing for the respondents, by relying upon the averments made in the counter affidavit as well as the documents available in the original files, would make a submission that, none of the grounds raised by the petitioner's side would be tenable, because, there had been local publication in newspapers and award also was already passed within two years period and it has been kept in the revenue account, by paying the amount allotted in this regard in the treasury, as the land owner did not come forward to receive the same.

7.The learned Additional Government Pleader would further submit that, during the life time of the petitioner's husband and his brother, who were the joint owners of the land in question, on behalf of the land owners, one of the owners, who is the brother of the petitioner's husband, namely one Musthafa, filed a writ petition challenging the very same land acquisition proceedings, in W.P.No.19048 of 1994, wherein, a stay of dispossession had been ordered by this Court on 25.11.1994. Because of the stay granted by this Court, even though, the land acquisition proceedings was completed by then, the respondents could not take possession. However, subsequently, the said

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writ petition was dismissed as devoid of merits on 02.09.2004. Thereafter, when the respondents were trying to take possession of the land, the petitioner approached this Court and got an interim order of stay of dispossession. Therefore, on the ground raised by the petitioner that, possession had not been taken voluntarily by the respondents, the land acquisition proceedings cannot be assailed upon.

8.I have considered the rival submissions made by the learned counsel for the petitioner, as well as the respondents, and also perused the materials placed before this Court, including the files produced by the learned Additional Government Pleader in this regard.

9.The learned Additional Government Pleader has relied upon the following averments made in the counter affidavit, which are extracted hereunder, for easy understanding.

> "2.It is submitted that an extent of 0.93.5 hect of dry land in R.S.No.109/2B had been acquired for the purpose to provide the house site to Adi-Dravidars or Moongilanthangal Village under the land Acquisition Act 1/1894 during the year 1991. As many as a number of 48 families had been identified as houseless and it was but just necessary action was taken to acquire the said land, and submitted the 4(1) proposals by the Spl.Tahsildar. (Adi-Dravidar Welfare) under L.A.1/1894 to the Govt. through the D.R.O.(ADW) Cuddalore in his reference A/258/91 Dt.30.6.91. Accordingly the Govt. had approved the proposals in its Abstract order G.O.(3D) No.1070/dt.21.11.91 in

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the Adidravidar and Tribal Welfare Department and the notification u/s.4(1) has been published in the Govt. Gazette and in the Tamil dailies as follows :

	Date of Published	Page
1.T.N.G. Gazette No.47C Part II (Sect.2 (Supplement) issue)	11.11.91	8
2.Tamil Daily "Viduthalai"	14.12.91	2
3.Tamil daily "Makkal Kural"	14.12.91	6

The substance of the notification was also published (Locality Publication) in Moongilanthangal Village on 3.2.92.

The enquiry u/s.5(a) of the L.A. Act had been conducted and the draft declaration u/s.6 of the Act has been published as follows :

1.T.N.G. Gazette No.37 Part II Sec.2 (Extraordinary)	30.1.93	1
2.Tamil Daily Athirstam	31.1.93	3
3.Tamil daily Viduthalai	30.1.93	4

The substance of the notification has been published in the locality on 3.2.93. Then the notice u/s.9(3) 10 has been issued to the land owners and award enquiry was conducted on 21.10.94 and the Award was passed in A/258/91 dt.7.11.94."

10.The first ground raised by the petitioner was that, there had been no local publication in local newspapers. This allegation is repudiated by the learned Additional Government Pleader stoutly by relying upon the relevant

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documents available in the files. On perusal, it is found that, at Pg.169 of the file in Volume-I, the publication made in the local dailies is available, according to which, the said publication was made in two tamil dailies, namely, "Viduthalai" and "Makkal Kural" on 14.12.1991. Therefore, within three days from the Gazette publication of 4(1) notification, this publication had been effected.

11.Insofar as the other grounds, namely, the award was not passed within two years period is concerned, the Section 6 declaration was gazetted on 30.01.1993, therefore, award should have been passed within two years period, i.e. on or before 30.01.1995. In this regard, on perusal of the files, it is found at Pg.465 of Volume-II that, award was passed under Section 11 of the Act on 07.11.1994, under which, the land in question, which was sought to be acquired was 0.93.5 Hectares and for the said land, a sum of Rs.26,583.39 was awarded. Since, the owners of the property did not come forward to get the award amount, the same had been deposited on 19.09.1995 in the revenue account at the Government Treasury and in this regard, a challan for remitting the amount in the Government Treasury is also available in the file.

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12.Insofar as the further grounds that throughout, the possession was with the petitioner or prior to that, with the petitioner's husband and his brother and it was not taken by the respondents is concerned, the reason has been given by the respondents' side in the counter affidavit, which reads as

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follows :

> "At this stage, Musthafa had filed a writ petition against the Land Acquisition Proceedings before the Hon'ble Court in W.P.No.19048/1994, dt.17.11.1994 in which the Hon'ble Court had granted an interim stay of dispossession in W.P.No.19048/1994 dt.25.11.1994. Hence, the land in question could not be taken to possession. Finally the Hon'ble Court has passed final orders as dismissed the writ petition and connected WMP No.20973/94 on 2.9.2004 and the same had been received in this office 29.1.2002. After that, the issuance of notice 12(2) to land owners, and the action being the taken possession had been started. After a lapse of nine years, the petitioner Kathunbee has preferred this writ petition before this Hon'ble High Court challenging the acquisition proceedings."

13.By relying upon these averments, the learned Additional Government Pleader would contend that, on 25.11.1994, stay of dispossession was granted by this Court in the writ petition filed by one of the land owners and the said writ petition was dismissed only on 02.09.2004. In the meanwhile, the petitioner's husband died and thereafter, this writ petition was filed by the wife of one of the brothers in the joint patta of the land in question in the year 2003, challenging the very same land acquisition proceedings, on the ground that, no notice had been served on her.

14.In this writ petition also, since, the order of stay of dispossession was granted on 05.11.2003, the respondents were not in a position to take the

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possession. Therefore, the learned Additional Government Pleader would contend that, the said ground raised by the petitioner's side that, throughout, the possession had been with the owners or the petitioner herein and voluntarily respondents had not come forward to take possession, is absolutely unjust and beyond truth, and therefore, based on that ground, the land acquisition proceedings in question cannot be assailed.

15.On perusal of the aforesaid factual matrix and the files produced before this Court and after hearing the arguments advanced by both sides, this Court feels that none of the grounds raised by the petitioner are tenable against the acquisition proceedings. Since there are no justifiable grounds available with the petitioner to show indulgence in the impugned land acquisition proceedings, this Court is not inclined to interfere with the impugned land acquisition proceedings.

16.However, the learned counsel appearing for the petitioner has made a further plea that, the very purpose of land acquisition was to provide house site to landless Adi-Dravidar people and in this regard, it is the submission of the petitioner that, since alternative suitable land were identified and plots were given to the beneficiaries, the land of the petitioner is no more required for any such public purpose, for which, the acquisition was made.

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17.However, the said submission made by the learned counsel for the petitioner is also stoutly denied by the learned Additional Government Pleader stating that, he has no instructions to represent to this Court, as to whether the land in question is no more required for any public purpose.

18.Be that as it may, that issue cannot be resolved herein, as this Court has gone only into the legal grounds raised by the petitioner for assailing the land acquisition proceedings, which are found against the petitioner and in favour of the respondents.

19.For all these reasons, this Court is not inclined to accept the case of the petitioner, as the grounds raised against the land acquisition proceedings on the side of the petitioner is completely untenable and hence, the writ petition fails. Therefore, it is liable to be dismissed.

20.In the result, the writ petition is dismissed. However, it is open to the petitioner to make a representation to the respondents, if she is so advised, on the ground that, the land in question sought to be acquired is no more required for the public purpose, for which, it has been acquired and if such a representation is made by the petitioner, it is open to the respondents to consider and decide the same on merits and in accordance with law and the dismissal of this writ petition will not stand in the way in the matter of considering and taking decision on the representation.

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21.With these directions, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order

To

1.The Secretary to Government,
State of Tamil Nadu,
Adi-Dravidar and Tribal Welfare Department,
Fort St. George, Madras – 9.

2.The Special Tahsildar,
Adi-Dravidar Welfare,
Kallakurichi,
Villupuram District.

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R.SURESH KUMAR, J.

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